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Coalition

Chasm Between Words and Deeds VIII: Lack of Bank Accountability Plagues Californians

April 2012

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Introduction

The recent multi-state settlement agreement between 49 state Attorneys General and the Big 5 Banks represents a turning point in the foreclosure crisis that has now plagued California for over five years. The relief provided to consumers under the agreement was not commensurate with the harm caused to struggling families and communities throughout the state and nation. However, it imposes important new standards on loan servicers, creates obligations to modify loans and reduce loan principal, and creates mechanisms that could finally hold banks accountable to their promises.

The foreclosure crisis has devastated California's communities, especially its communities of color. In January, nine out of the 10 metropolitan areas with the highest foreclosure rates in the nation were in California.[1] Unfortunately, there is no end in sight. Currently over two million California homeowners are underwater, owing more on their homes than they are worth[2].

Since the housing bubble started to collapse in late 2006, the state and nation have struggled to develop effective foreclosure prevention strategies. Since then, many government and industry programs have come and gone. These proposals have differed from one another, and each has suffered from different drawbacks. But ultimately, all of the proposals and programs have failed in light of industry intransigence and the inability of policy makers to hold banking institutions accountable to the requirements of these programs.

In fact, San Francisco Assessor-Recorder Phil Ting recently released a report documenting his office's audit of 382 San Francisco homes that went through foreclosure from 2009-2011. The audit revealed that 84% of sampled foreclosures contained at least one clear violation of California's foreclosure laws.[3]

CRC began surveying housing counselors in 2007 in order to highlight the huge disconnect between what the banking industry was saying about its performance on foreclosure prevention initiatives, and what consumers and their advocates were experiencing on the ground. Housing counselors are on the frontline of the efforts to help homeowners stay in their homes and their responses help fill a crucial data gap.

CRC's January/February 2012 survey collected responses from more than 70 counselors representing 50 housing counseling agencies across California that collectively serve thousands of borrowers a month. This is CRC's eighth survey since 2007. Sadly, little has changed over these years. Without enforcement of clear obligations and imposing real consequences for bank's failure to comply, it is difficult to expect better outcomes for borrowers and communities.

[1] RealtyTrac January 2012 Foreclosure Report, http://www.realtytrac.com/content/foreclosure-market-report/january-2012-us-foreclosure-market-report-7022.

[2] NPR, California to sign mortgage settlement, February 9, 2012, http://www.npr.org/2012/02/09/146626629/n-y-california-to-sign-mortgage-settlement

[3] "Assessor-Recorder Phil Ting Uncovers Widespread Mortgage Industry Irregularity in San Francisco Foreclosures [Press Release]," Office of the Assessor-Recorder of San Francisco, February 15, 2012.

This survey focuses on six key problems still confronting California homeowners. The findings of this report are organized by the six findings identified here.

Finding #1: The dual track continues to devastate families and challenge housing counselors;

Finding #2: Principal reduction loan modifications are needed, but still rare;

Finding #3: Fair housing concerns have not been addressed amidst concerns that hard hit borrowers and communities fare worse in getting loan modifications;

Finding #4: The federal Independent Foreclosure Review process represents a poor federal response to abusive foreclosure practices

Finding #5: The need for nonprofit housing counselors has never been greater, yet their capacity is shrinking; and

Finding #6: Servicers continue to do a poor job of preventing unnecessary foreclosures, though some servicers are worse than others.

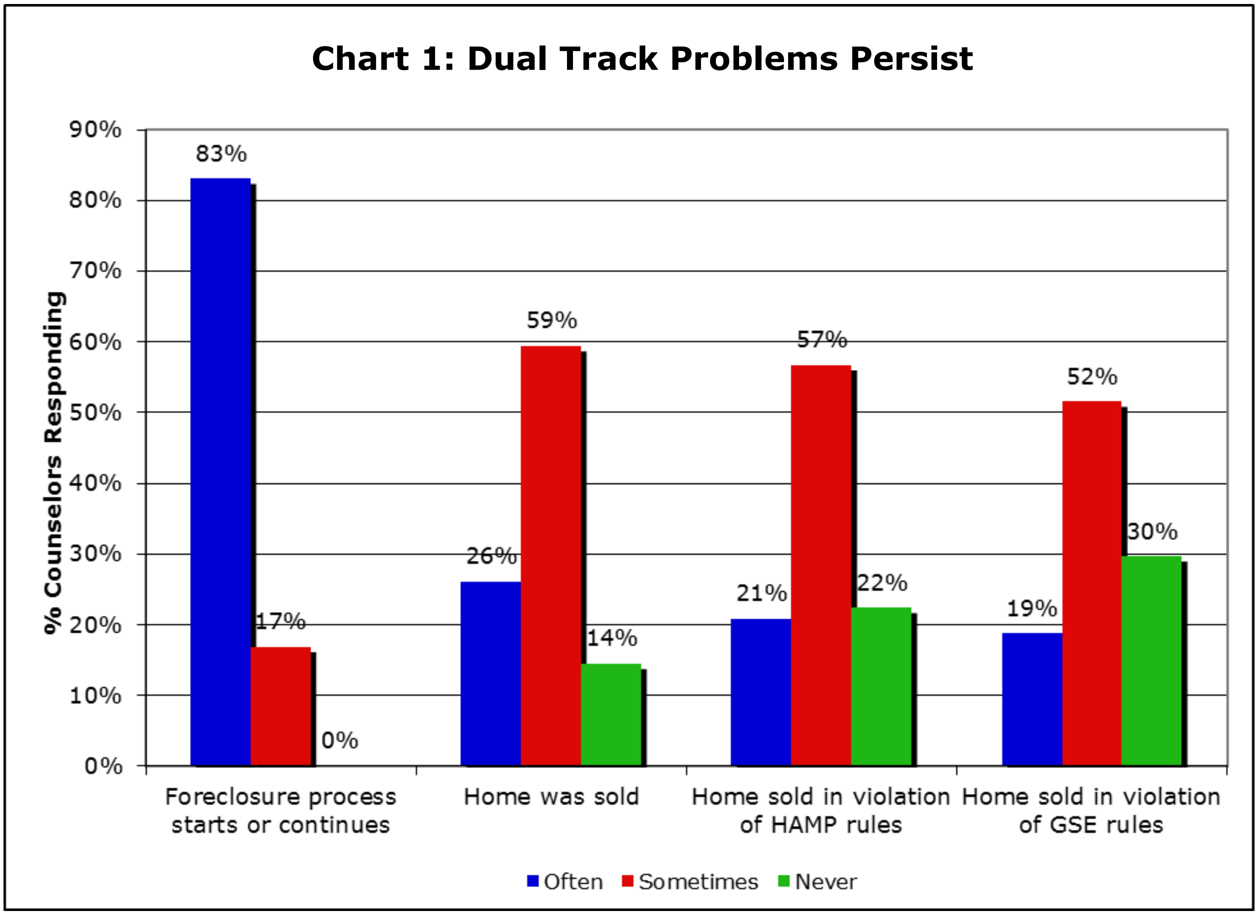
Finding #1: "Dual track" problems continue to devastate families and challenge housing counselors.

> *"This is still the worst problem our clients face. The frustration of dealing with months and years of the loan modification morass only to have the house sold out from under the borrower is unacceptable. Fannie Mae should be investigated for all the dual track foreclosures they have caused."*

Previous CRC surveys indicated that the "dual track" problem, where loan servicers proceed with foreclosure against a homeowner who is working in good faith to negotiate a loan modification, is a major problem.

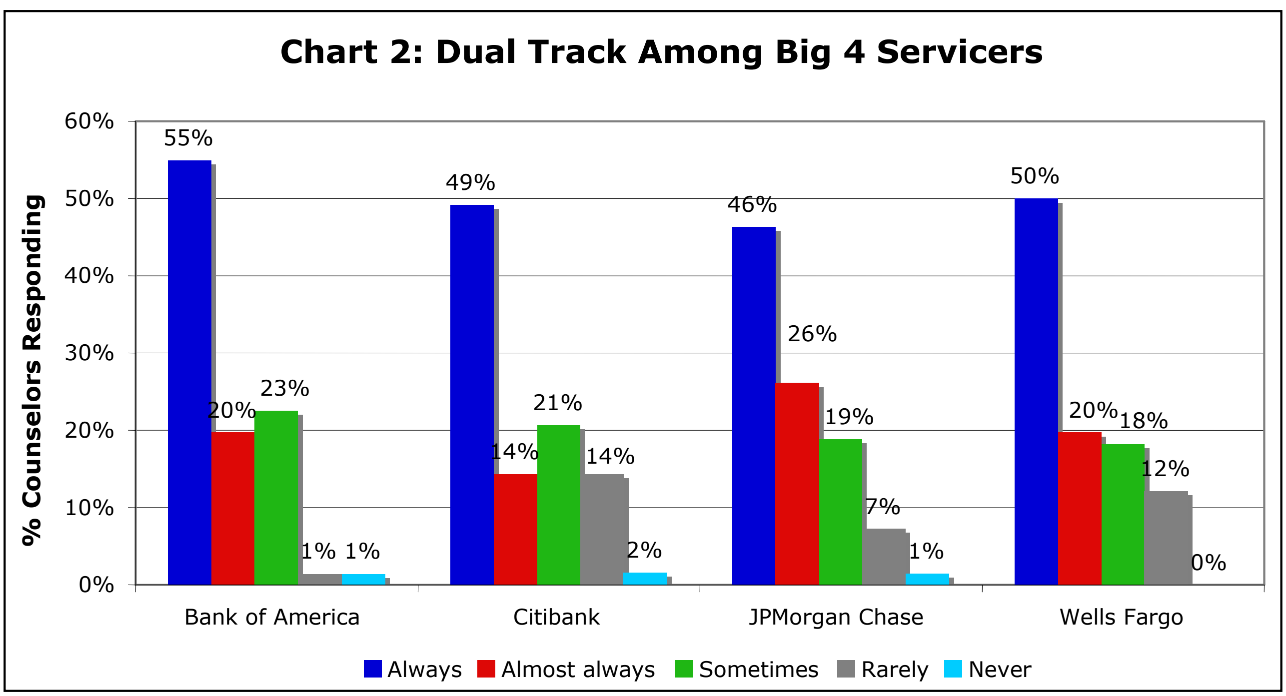
- This year 100% of counselors reported that the foreclosure process "often" or "sometimes" started or continued while a modification application was still under review, up from 95% last year (see Chart 1 below).
- Meanwhile, 86% of counselors reported that clients "often" or "sometimes" have their home sold while a modification application is still under review.
- It is notable that 78% of counselors reported that homes were "often" or "sometimes" sold in violation of HAMP rules and 70% were "often" or "sometimes" sold in violation of GSE rules.

These last two points highlight the need for laws and regulations to come with strong enforcement mechanisms and penalties to create incentives for servicers to comply, and provide redress to household when servicers do not comply.



Source: CRC Counselor Survey January/February 2012

When housing counselors were asked how common dual track issues were with the Big 4 Servicers, the most common response was that dual track was "always" a problem (see Chart 2).



Source: CRC Counselor Survey January/February 2012

- Bank of America had the worst track record, with 75% of counselors reporting that dual track problems "always" and "almost always" occurred.
- JPMorgan Chase came next with 72%, then Wells Fargo with 70% and finally Citibank with 63% of counselors reporting that dual track issues "always" or "almost always" took place.

This problem is evident on a national scale too. A February 2012 nationwide survey by the National Association of Consumer Advocates (NACA), the National Consumer Law Center (NCLC) and the National Association of Consumer Bankruptcy Attorneys (NACBA) also found dual track to be a major problem.[4] The survey found that over 90% of respondents represented a homeowner placed in foreclosure while awaiting a loan modification. Of these, 85% represented a homeowner awaiting a HAMP loan modification and 66% represented homeowners with Fannie or Freddie loans. Over 80% of respondents represented a homeowner over the last year where the actual foreclosure sale was attempted while the borrower was awaiting a loan modification.

The dual track problem creates stress and uncertainty for clients who then become more focused on foreclosure than the workout process. It is demoralizing and devastating when people have the hope of a modification and then their home is suddenly up for sale or sold. In their desperation, clients become easy targets for scams or are pressured into a short sale or bankruptcy to postpone the sale date.

Since counselors have to keep track of and fight for a modification and a sale date postponement, the dual track problem also strains limited staff and resources of nonprofit housing counselors. Ultimately, dual track makes modifications more difficult, leads to more unnecessary foreclosures, and prevents counselors from serving more clients.

One of the housing counselors said it best, *"This causes a lot of stress for the client while they are trying to get their modifications and it causes a lot of extra work for us as we are having to not only fight for the modification but are also fighting in many cases to get the sale dates postponed at the same time."*

Another housing counselor from San Diego reports, "*it makes it difficult to resolve mortgages when there is uncertainty as to if the home will be sold. Also, it drives many clients to bankruptcy trying to stop the sale date rather than achieving a final resolution with the lender*."

[4] "Servicers Continue to Wrongfully Initiate Foreclosures: All Types of Loans Affected", National Association of Consumer Advocates (NACA), the National Consumer Law Center (NCLC) and the National Association of Consumer Bankruptcy Attorneys (NACBA), February 22, 2012, available at http://www.nclc.org/images/pdf/pr-reports/pr-wrongful-foreclosure-survey-results.pdf

Housing Counselors Describe the Impact of Dual Track, CRC January/February 2012 Survey

"Makes advice and or information worthless when clients are following the correct processes only to see their home foreclosed while they are in the middle of the process."

"I am now 3 months into an illegal foreclosure while under HAMP for a GSE Freddie Mac loan (Freddie yet to respond). I've reached out to as many people as would listen and then some, with an eviction fast approaching for a widower father of a 4 and 6 yr old boys who already lost their mom. Servicers do what they do, and even if they make a mistake and give the house back, there is no compensation for the stress and trauma families are put through."

"Since I practice bankruptcy, the automatic stay prevents the foreclosure, if the homeowner gets to me before the sale. However, many of the homeowners who come to me have been trying to get a loan mod outside bankruptcy and have been dual tracked; necessitating my filing their bankruptcy notwithstanding a pending loan mod."

"Clients don't understand - they want to believe if they turn in an application nothing can happen until they hear whether it was approved. When we explain dual track, they freak out and don't want to try. It takes away their hope."

"The amount of time, paperwork and reporting to keep track of files is multiplied due to constant efforts to postpone the Trustee Sale. This also affects the ability to assist more borrowers since the capacity is limited due to fund restriction."

"Creates an enormous burden on staff who are already working with heavy caseloads well above capacity. Everything needs to be dropped and hours need to be spent on the phone trying to stop the sale. In some cases the only option is for the clients to file bankruptcy in order to stop the sale and buy more time."

"The level of stress that nothing (except bank's mercy) can stop the foreclosure or a client has to file for bankruptcy to buy time to finish out the request for modification. One hand is telling you we need this and that paper, while the other (foreclosure dept) has the attorneys accelerating the legal process. They do grant postponements on 30 day intervals which we have to be on top of because if we don't request it, the foreclosure is put on us for not doing so."

"Adds stress to the already stressful situation. Causes our staff to engage in "crisis mode" counseling instead of "process mode."

"Clients become frustrated with how lenders take forever to review a file while still in foreclosure and we as counselors are having to constantly follow up to make sure lender doesn't sell the property."

"It produces unnecessary chaos, clients often times have to file for bankruptcy in order to postpone sale dates. Representatives show a lack of interest in trying to assist the homeowners to keep their homes. Because of the desperation clients will often become easy targets for scammers".

"More work and necessary contact to the servicers. Not only does the foreclosure process continue, but if borrower did not call in to request extension of trustee sale, the modification departments or loss mitigation department very rarely notifies the foreclosure department and trustee to stop sale without borrower calling and making a request."

"My clients live in constant fear."

"End Dual Track!!! When is this going to happen? If it doesn't happen, all other servicing standards are meaningless. Time lines and transparency of modification standards would be good servicing standards - especially if enforced. The enforcement mechanism needs to be clear."

Finding #2: Principal reduction modifications are needed and financially feasible, but still rare.

"I have never seen a reduction [in principal]."

"We have only seen principal reduction with loans owned by the bank/servicer. Fannie and Freddie are the biggest challenge when implementing principal reductions for our client."

"None in my experience. I saw 2 in 2009 by Bank of America but only because they were Countrywide originated and offered the reduction to pacify the client from filing lawsuits."

Principal reduction represents one of the best opportunities to stabilize families and neighborhoods, and to allow our housing market to begin to recover. The lack of principal reduction remains an immense barrier to sustainable modifications. With the large number of homeowners underwater, principal reduction is essential to protecting California's homeowners and stabilizing communities. Reducing the principal on a loan can help borrowers by making the payments more affordable and in line with the actual value of their homes. A recent nationwide survey of housing counselors by the Center for New York City Neighborhoods found that principal reduction was cited as the most important way to widen HAMP's eligibility to reach those who are not currently being helped.[5]

In CRC's survey this year, 84% of counselors indicated that the Big 4 Servicers "always" or "almost always" fail to reduce principal when granting modifications (see Chart 3).

The different rate at which banks are willing to grant principal reductions on loans they own indicates that they are capable of granting principal reductions but choose not to (see Chart 4). Banks recognize that *when they own the loan*, it often makes sense for the bank to reduce principal. Some estimates have banks reducing principal on 20% of their loan modifications where the bank owns the loan. If banks are willing to reduce principal on loans that they own, they should not be reluctant to do so for investors on whose behalf they service loans. This dynamic raises serious questions about whether loan servicers are operating in the best interests of investors and borrowers. It also raises serious questions about why the Acting Director of the Federal Housing Finance Agency refuses to allow principal reduction on Fannie Mae and Freddie Mac loans, which constitute the majority of loans in our state.[6]

- For loans owned by the servicer, 53% of counselors reported that clients "never" receive principal reductions when granted a loan modification, with 43% saying "sometimes" and 4% saying borrowers "often" receive principal reduction.
- In contrast, for loans *not* owned by the servicer, 79% of counselors reported that borrowers "never" are granted a principal reduction when they obtain a loan modification. Meanwhile, only 21% of counselors report borrowers "sometimes" get principal reduction when their loan is not owned by the servicer.

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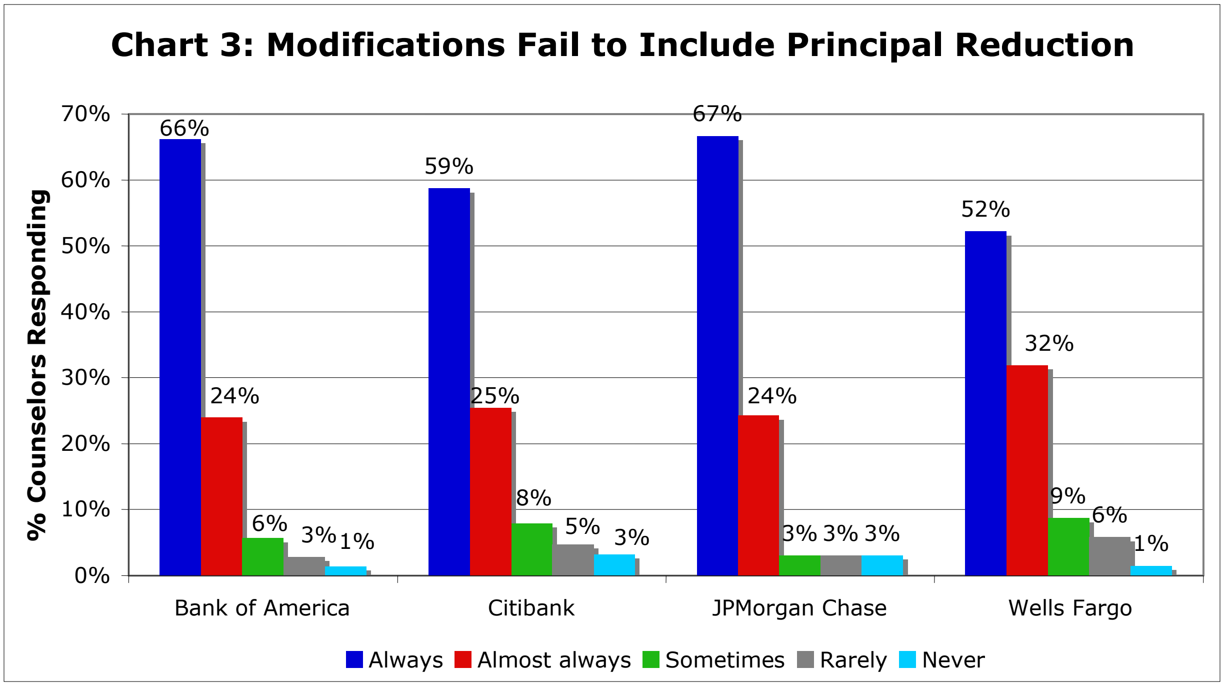
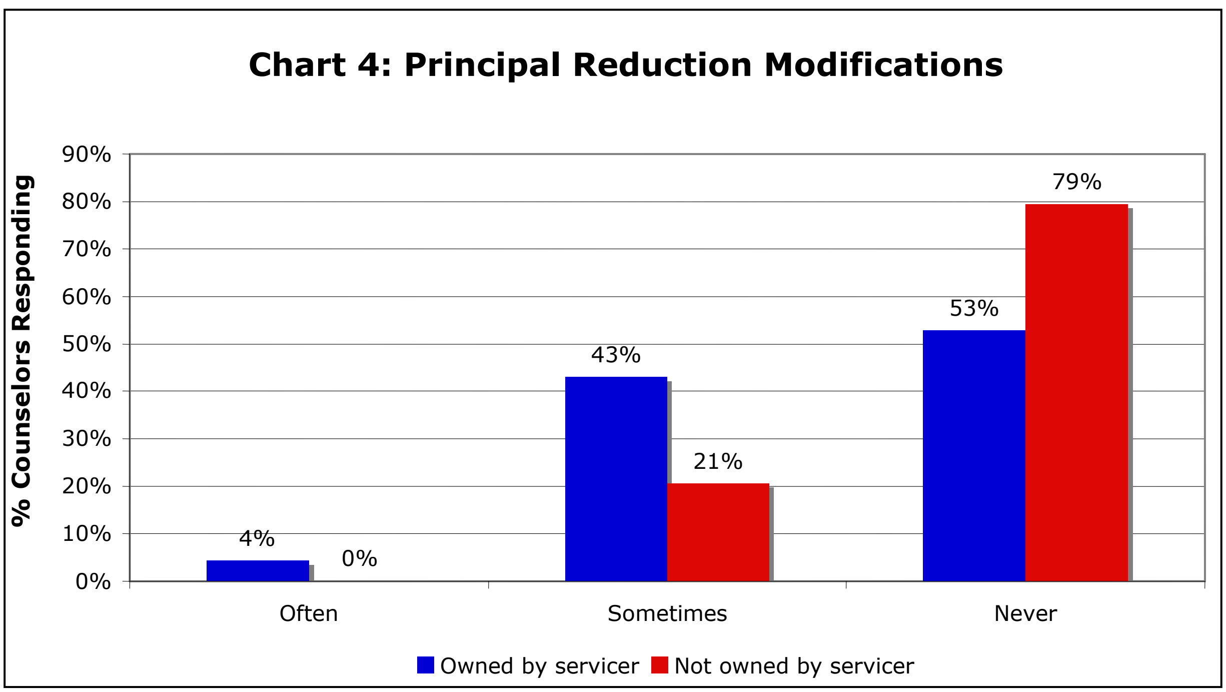
[5] The Future of HAMP 2012 - A National Survey of Housing Counselors by National Housing Resource Center

[6] See "97 California Organizations Demand Immediate Foreclosure Policy Changes from FHFA," March 15, 2012, available at http://www.calreinvest.org/news/97-california-organizations-demand-immediate-foreclosure-policy-changes-from-fhfa



Source: CRC Counselor Survey January/February 2012



Source: CRC Counselor Survey January/February 2012

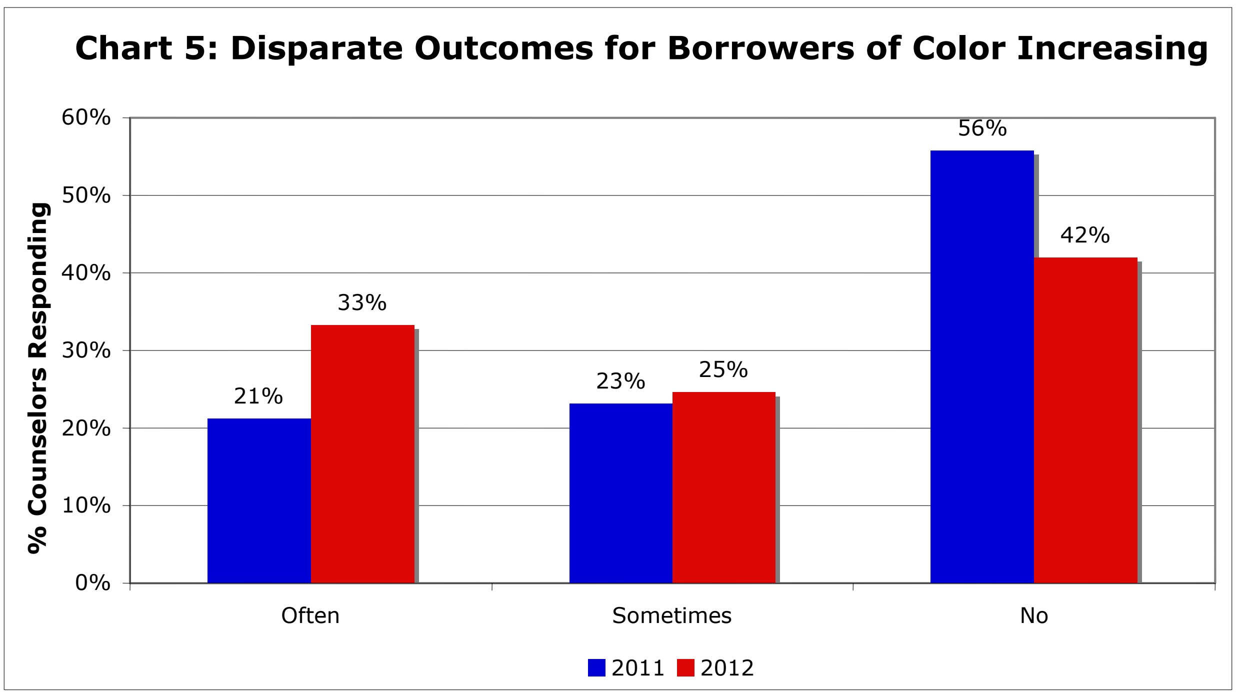
This stark contrast between loans that are and are not owned by the bank/servicer indicates that it is financially feasible to grant principal reductions, that homeowners could and should be receiving principal reductions at a higher rate, and that banks are not necessarily operating in the best interest of investors. For consumers, it seems unfair that whether and what kind of assistance they receive depends on who owns their loan.

Finding #3: Fair housing concerns have not been addressed amidst concerns that hard hit borrowers and communities fare worse in getting loan modifications.

"Spanish-speaking departments within the banking community are HORRIBLE. There is no love for La Raza. I was actually told that the representatives on the phone do not take notes(?!). Many Spanish-speaking clients are losing their homes to lack of information and are experiencing oppositional attitudes."

Borrowers of color may receive worse outcomes

When asked if counselors think that borrowers of color are experiencing worse outcomes than white borrowers when trying to avoid foreclosure, the majority thought this was true. Fifty-eight percent of counselors thought that borrowers of color "often" or "sometimes" experienced worse outcomes, up from 44% last year (see Chart 5).



Source: CRC Counselor Survey January/February 2012

Many counselors' comments suggested that disparate outcomes were due to the fact that borrowers of color might more often be limited English proficiency (LEP) individuals, lack financial education, or might not fully understand the loan modification application process. Others indicated that borrowers of color do not have money to pay for attorneys to file bankruptcy to stall the trustee sale date as often as white borrowers. Other reasons given include that borrowers of color often had worse loan terms in the first place, are more often taken advantage of by scams and have higher unemployment rates.

"When English is limited, some clients feel very intimidated by the whole process, get taken advantage of more easily by scammers. Often there is a lack of education"

"Yes because in a lot of cases they were given a loan that they could not afford in the first place and now are trying to qualify for a loan modification and they don't qualify if the loan amount is too high and their income is too low, especially if they had an option-ARM loan."

"From my experience, Latino borrowers with limited English and modest incomes have the most challenges. Files I have reviewed indicate origination problems - steering to subprime products, excessive fees, misleading information, and bad loan products. No recognition by servicer of origination issues in loan modification process, repeated request for docs, extremely long processing/decision-making times. I also think there are gender disparities for women who are separated, divorced or whose husbands have died. There is a complete disconnect by the servicers in how to deal with these loan mods and they continue to want to process the loan as if the husband is still a part of the process."

"Yes, but I am not sure that its because the lender is not helping them because of their color. It can be because they're the ones that are losing more jobs. I do see that clients that don't speak English have a harder time dealing with their lender. They get assigned a representative that doesn't speak their language. Also, the servicer might not accept a hardship letter if its not in English. If a client cannot speak English, how can they write a letter in English????"

Borrowers are steered into less favorable non-HAMP modifications

Even when homeowners do receive a loan modification, they are consistently encouraged to take non-HAMP proprietary modifications. Non-HAMP modifications generally come with less favorable terms for the consumer. Eighty-two percent of counselors reported that clients "sometimes" or "often" were encouraged to take non-HAMP proprietary modifications even when they appeared to qualify for HAMP modifications. This is a slight reduction from last year when 89% of counselors reported this to be the case.

Counselors reported that this outcome is commonplace because banks often say that a borrower is not qualified for a HAMP modification even if it appears that they are, or because the bank takes so long to process the modification that the borrower takes a non-HAMP modification out of desperation instead. Several counselors were quite pessimistic about the banks' motives and thought that they pushed borrowers into non-HAMP modifications because it is more profitable, requires less paperwork and reporting on their part, they want to avoid HAMP rules or because they want HAMP to fail.

"In my experience, there has never been a logical concrete reason. The excuses given don't make any sense and the only reasonable explanation is that the non-HAMP is more advantageous to the lender."

Finding #4: The federal Independent Foreclosure Review (IFR) Process represents a poor federal response to abusive foreclosure practices.

"Servicers, except Wells Fargo, began to give more loan modifications after the Consent Order was signed. However, the servicers made sure to mail out the Notice about the Independent Foreclosure Review before homeowners heard any publicity about the program. Most homeowners threw them away since they did not know what it was and further because the Notice was not written in their native language."

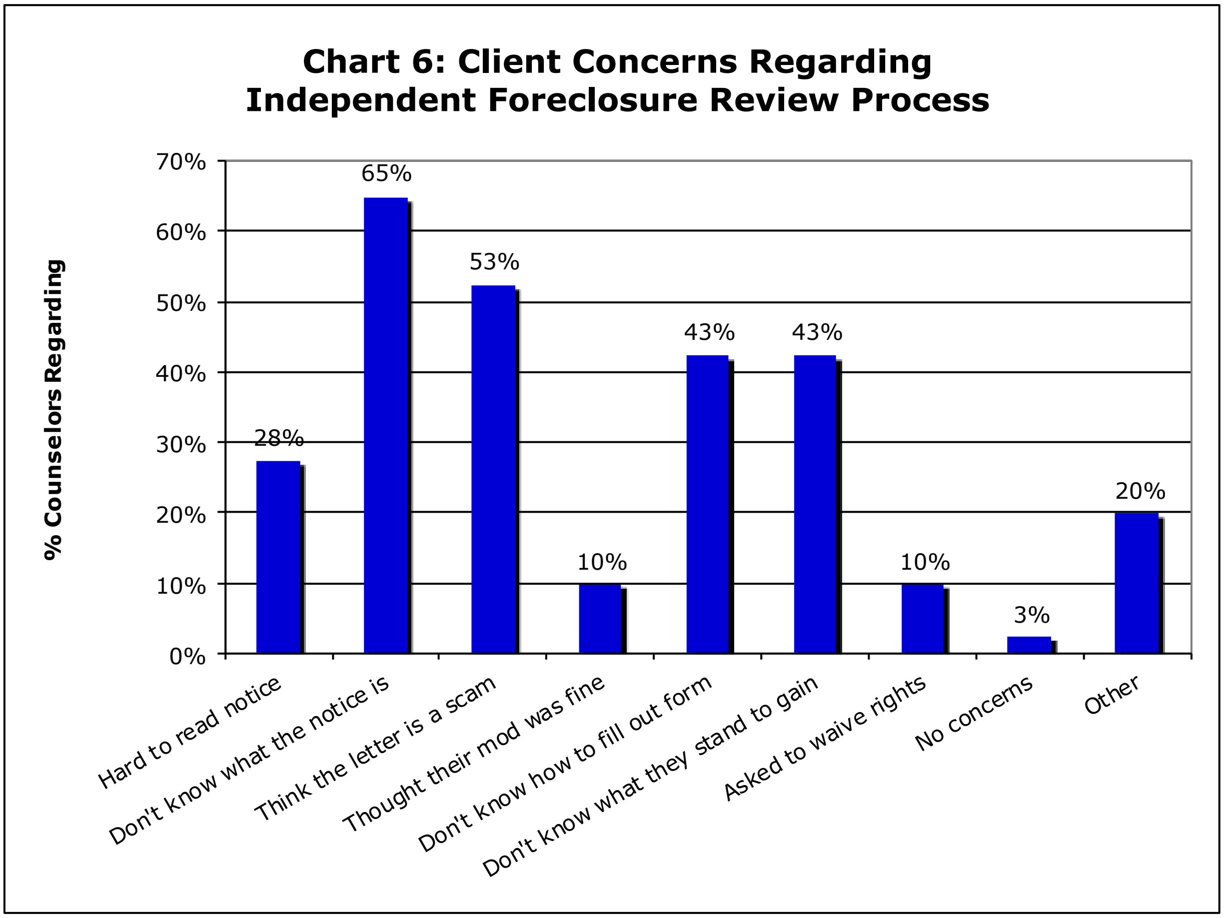
In response to concerns about robo-signing and other foreclosure abuses, the Federal Reserve Board and the Office of the Comptroller of the Currency (OCC) entered into consent decrees with fourteen banking institutions. As part of the process mandated by the banking regulators, servicers were to mail letters to approximately 4 million consumers inviting them to file claims establishing they suffered financial harm as a result of servicing or foreclosure problems.

This process is significant in that it represents a major response from the banking regulators to abuses by banking institutions improperly foreclosing on homeowners. At the same time, the recent national multi-state Attorney General with the five largest servicers (Ally, Bank of America, Citibank, JPMorgan Chase, and Wells Fargo) was linked to this IFR process, in that disappointingly low restitution dollars for victims of foreclosure under the settlement agreement (up to $2,000 for certain borrowers who lost their homes) were rationalized as merely complementing the IFR process where consumers could be compensated for actual harm suffered.

But many problems have been identified with this process. Questions have been raised about the independence of consultants hired by banks to implement the process, the lack of clarity around what constitutes "financial harm" and what compensation will be available to consumers who prove it, whether consumers will be asked to waive legal rights they may have, whether information provided by consumers through this process will be used by financial institutions to the detriment of consumers, whether consumers can reasonably be expected to understand the legalistic and confusing forms and process established by the consent decrees, and the fairness of limiting potential relief only to those in the foreclosure process during 2009 and 2010 when millions have suffered from the same foreclosure abuses in preceding and ensuing years.

Some of these concerns have surfaced in survey responses. While only 43% of housing counselors fielded calls or visits from homeowners who received notices regarding the IFR process and 82% reported that it was too early to tell if the process was working, borrower responses as reported by housing counselors already reveal potential problems.

In particular, 65% of counselors reported that homeowners did not know what the notice was, 53% reported that homeowners thought it was a scam, and 43% reported that homeowners either did not know what they stood to gain or did not know how to fill out the form (see Chart 6).



Source: CRC Counselor Survey January/February 2012

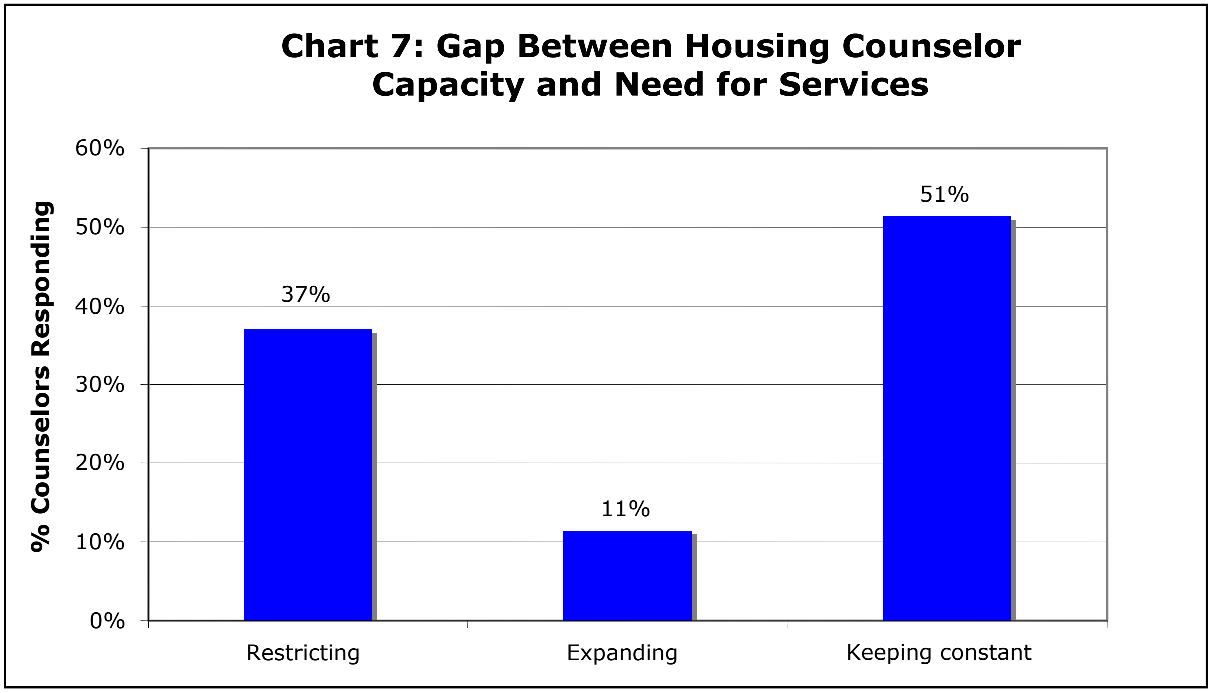
Finding #5: The need for nonprofit housing counselors has never been greater, yet their capacity is shrinking.

"We need more funding. After having a small section in the news media regarding a loan modification success, we received over 120 calls in only 3 days. This shows that we need more agencies, counselors… and of course funding to support all of these new borrowers."

Housing counselors work tirelessly with largely uncooperative loan servicers to find ways for homeowners to stay in their homes and keep communities together across the state. Despite numerous hurdles and continuing difficulties, and due in large degree to the hard work and assistance of these counselors, successful loan modifications are taking place. In fact, 51% of counselors reported that sustainable loan modifications increased from 2010 to 2011.

This hardly means that their work is done;

- Seventy-five percent of housing counselors report that they expect demand for their services to increase in the coming year.
- Meanwhile, 37% of their offices are restricting their counseling capacity and only 11% are expanding, with the remaining 51% keeping constant (see Chart 7).



Source: CRC Counselor Survey January/February 2012

All of this is particularly disturbing since homeowners will require additional assistance getting through the IFR consent decree process and navigating the recent Attorney General settlement. These two processes are already being cited by scam artists who are trying to deceive consumers into paying them for assistance they can better get for free from nonprofit housing counselors.

Recent regulatory fines presented a golden opportunity to pay for much needed housing counseling and legal services. Yet, shockingly, the Federal Reserve and the OCC may allow banking institutions to pay off these fines by crediting to them the costs they incur in implementing the flawed IFR process.[7] This raises the prospect that penalties imposed for wrongdoing will merely subsidize a program that winds up benefiting few borrowers.

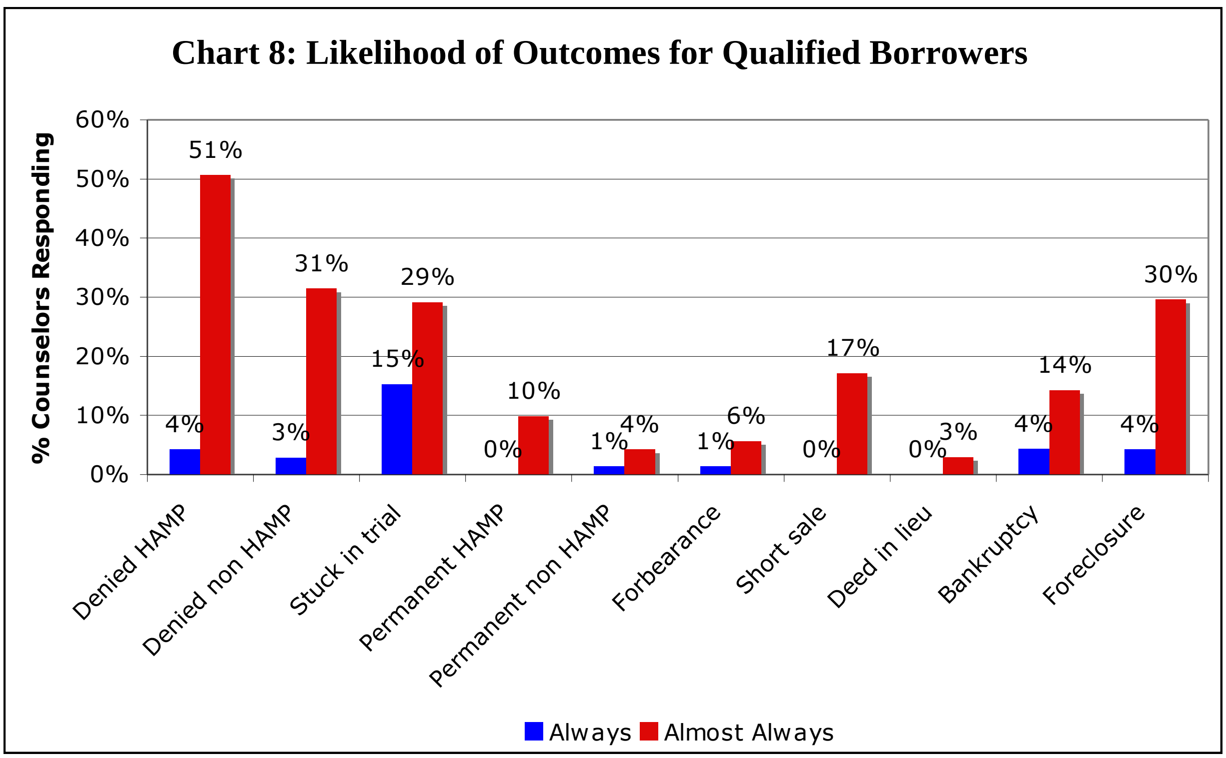
[7] "In an effort to facilitate a broad settlement of related state and federal claims, and to obtain an agreement that will maximize the effectiveness of assistance provided through an integrated set of remedial programs, the Board decided to act in conjunction with the comprehensive settlement between those five firms, the U.S. Department of Justice, and the state attorneys general announced on February 9. The total settlement amount includes the Board's monetary sanctions. Under the terms of the Board's monetary sanctions against these firms, each firm must pay to the Board, for remittance to the U.S. Treasury, the amount imposed by the Board on the firm that the firm has not expended within the next two years in providing borrower assistance or remediation in compliance with the federal-state settlement agreement or on a program acceptable to the Federal Reserve," in Testimony of Suzanne G. Killian, Senior Associate Director, Division of Consumer and Community Affairs of the Federal Reserve Board of Governors, Before the Committee on Oversight and Government Reform, U.S. House of Representatives, Field Hearing, Brooklyn, New York, March 19, 2012.

Finding #6: Servicers continue to do a poor job of preventing unnecessary foreclosures.

Homeowners still suffer from bad outcomes and struggle to remain in their homes

The country's primary foreclosure prevention tool is the Obama administration's Home Affordable Modification Program (HAMP). However, despite the professed goals of the Home Affordable Modification Program, housing counselors indicate that loan servicers continue to fail to work with borrowers to keep them in their homes. This year, when asked the likelihood of various outcomes for clients that appeared to be qualified for loan modifications, counselors reported that receiving a permanent HAMP modification or a permanent non-HAMP modification were not common (see Chart 8).

"It really isn't working and it's costing everyone involved a lot of money to just spin their wheels. If programs like this are going to be put into effect, please think them through and put processes in place that will ensure servicers will follow through."



(Source: CRC Counselor Survey January/February 2012)

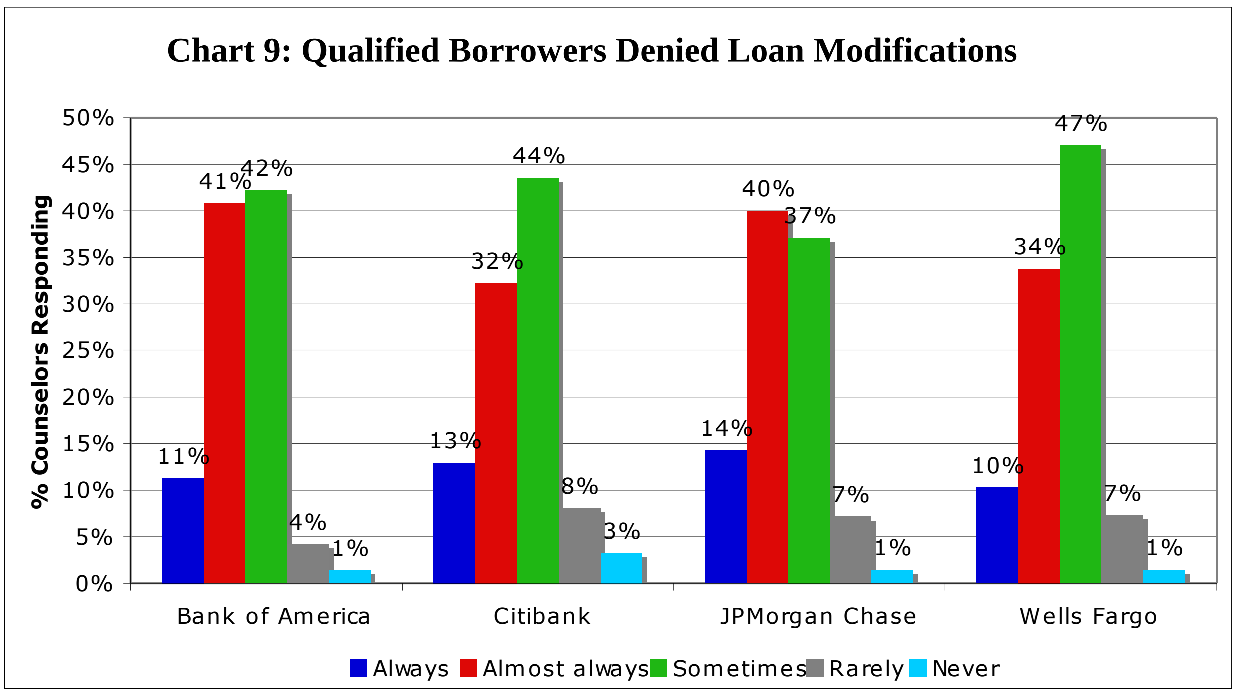
- More counselors—55% of those responding—cited "denied HAMP modification" as "always" or "almost always" occurring compared to other possible borrower outcomes.
- The second most common outcome was "stuck in trial modification" with 44% of counselors reporting this "always" and "almost always" occurs.
- 34% of counselors noted both that borrowers "always" or "almost always" are denied non-HAMP (proprietary) modifications or experienced foreclosure.

When asked how often qualified borrowers are denied loan modifications by the Big 4 Servicers (Bank of America, Citibank, JPMorgan Chase and Wells Fargo), a large percentage of housing counselors noted that qualified borrowers are "always" or "almost always" denied modifications (see Chart 9).

- JPMorgan Chase (54%) and Bank of America (52%) remain the worst offenders, with the largest percentage of "always" and "almost always" responses from counselors. There has been some improvement from last year however, when 65% of counselors reported JPMorgan had these outcomes, while 63% of counselors reported these outcomes for Bank of America.

- Citibank was slightly better this year, with 45% of counselors reporting they "always" or "almost always" deny qualified borrowers, compared with 51% last year.

- Wells Fargo saw 44% of counselors reporting that they deny modifications for qualified borrowers "always" or "almost always", compared to 58% last year.

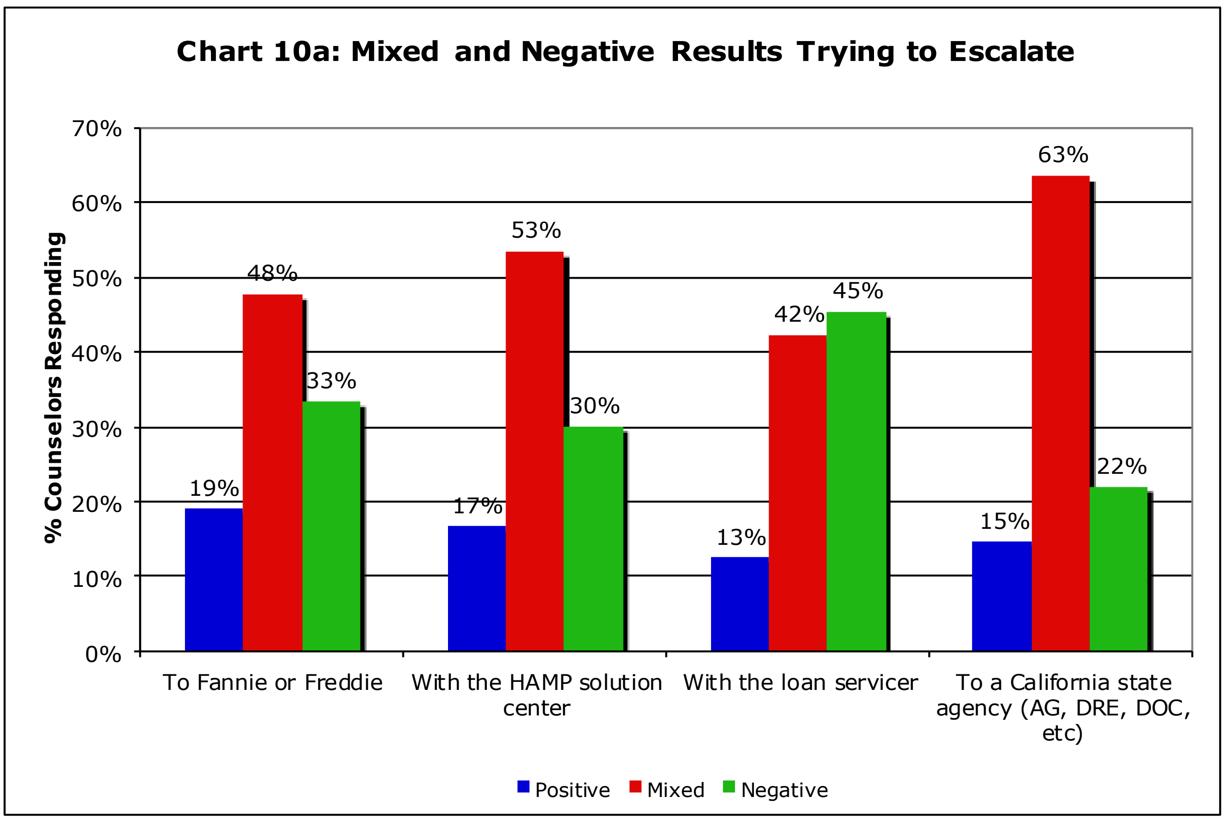


Source: CRC Counselor Survey January/February 2012

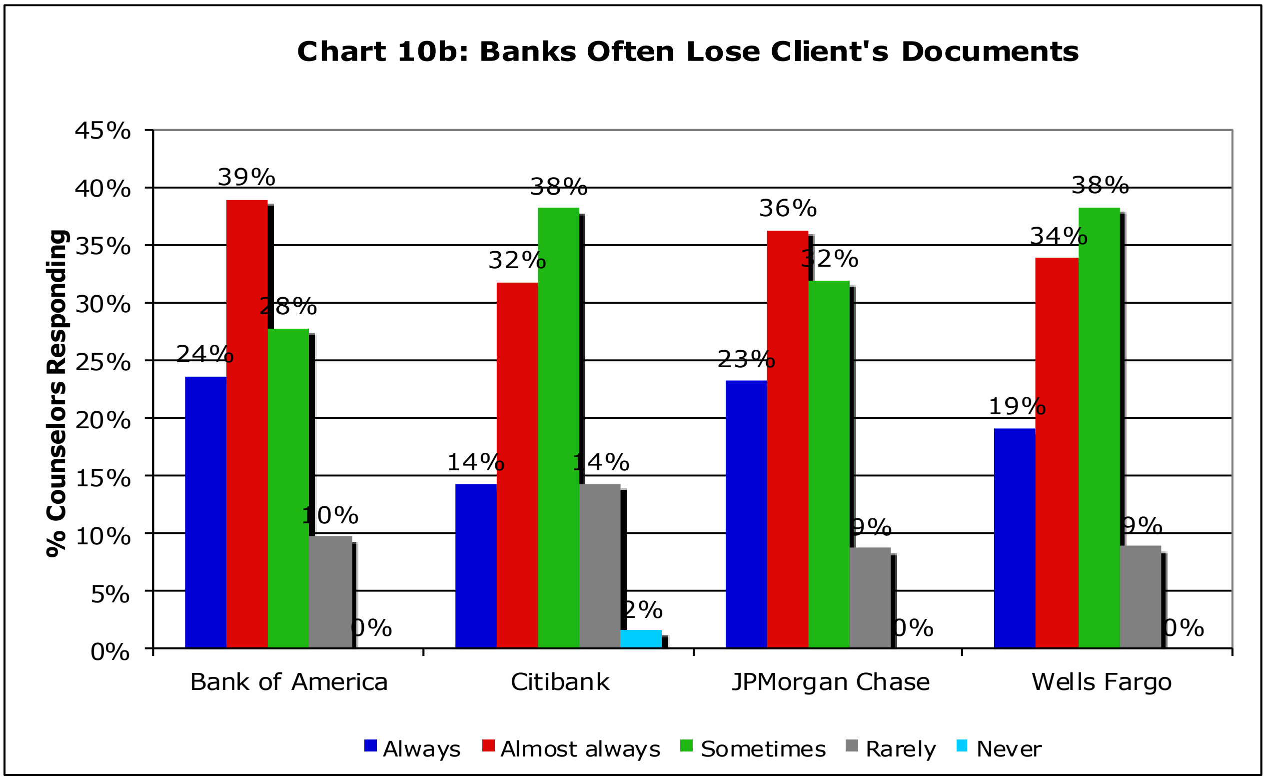
Servicers fail to meet many (any?) of the key metrics

As in surveys past, counselors cited poor performance for the industry along a number of factors:

- *Escalations*. Counselors were least likely to report "positive" outcomes in dealing with Fannie and Freddie; HAMP escalations; servicers directly; or state agencies (see Chart 10a);
- *Delay*. A shocking 88% of counselors reported that Bank of America "always" or "almost always" takes too long to decide and respond, with 87% reporting the same for JPMorgan, 83% for Wells Fargo, and 71% for Citibank.
- *Lost documents*. A majority of counselors reported that the Big 4 Servicers "always" or "almost always" lose client documents (see Chart 10b).
- *Inconsistent information given*. JPMorgan Chase was cited by 61% of counselors as "always" or "almost always" providing inconsistent or incorrect information. The figures were 60% for Bank of America, 53% for Wells Fargo, and 46% for Citibank.
- *Unsustainable loan modifications*. Even when modifications were granted, JPMorgan Chase was cited by 36% of housing counselors as "always" or "almost always" offering loan modifications that are not sustainable for the long term, Citibank was similarly cited by 35% of counselors, while Bank of America and Wells Fargo were both cited 31% of the time.



Source: CRC Counselor Survey January/February 2012



Source: CRC Counselor Survey January/February 2012

All servicers are not created equal

CRC asked housing counselors how often they encountered various issues with the Big 4 Servicers and uncovered many negative trends, similar to those revealed by last year's survey.

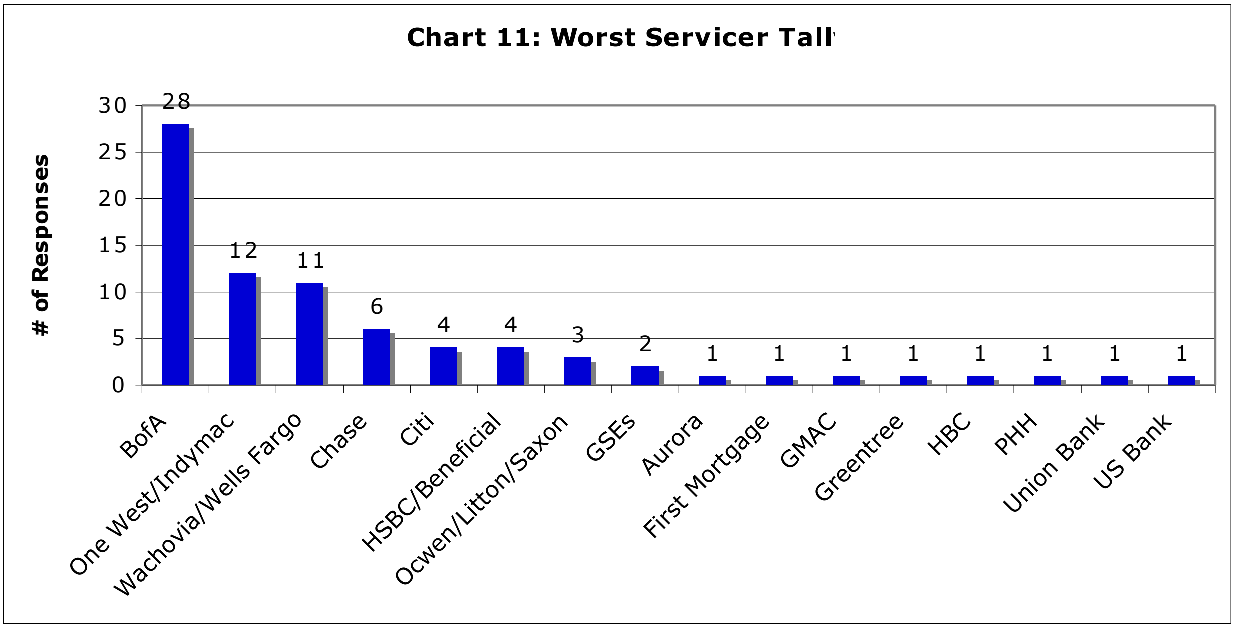
Rating the top servicers

Housing counselors were asked to rate the top servicers based on how likely the servicers were to help borrowers save their homes when they thought that outcome was possible. As seen below in Chart 12, the majority of counselors reported that all the servicers were "terrible" or "bad."

- HSBC, OneWest and Aurora received the worst ratings, with 98%, 95% and 94% of counselors, respectively, reporting that these servicers were either "terrible" or "bad."
- 84% of counselors reported that Bank of America was "terrible" or "bad," with 83% citing both Citibank and JPMorgan Chase as "terrible" or "bad" and 82% giving this assessment to American Home.
- US Bank was cited by 76% of counselors as "terrible" or "bad," and Ocwen/Litton/Saxon and Wells Fargo were both given this rating by 74% of counselors.
- The GSE servicers Fannie Mae and Freddie Mac were not rated much better than the others, with 66% of counselors rating them as either "terrible" or "bad."

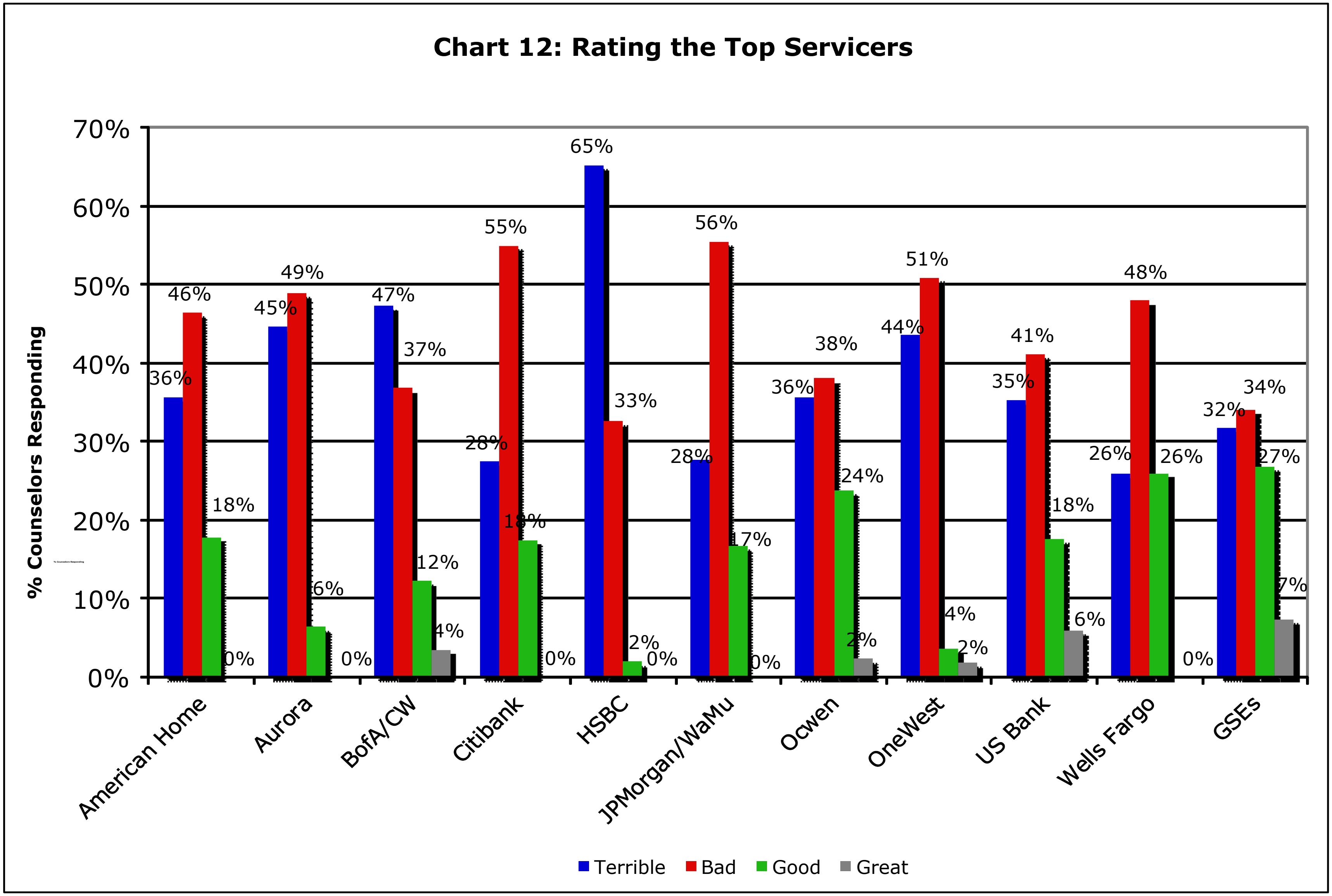
The Worst Servicer

Housing counselors were asked which servicer has the worst performance in terms of foreclosure prevention and why. Counselors named 16 servicers. Bank of America, cited 28 times, was rated the worst bank again this year (see Chart 11). With 12 mentions, One West came in second and Wells Fargo came in third with 11 mentions. Some counselors opted to name just one servicer, while others mentioned more than one servicer.[8]



Source: CRC Counselor Survey January/February 2012

[8] See Appendix A for a compendium of all comments from housing counselors in response to the question, "which servicer would you say has the worst performance in terms of foreclosure prevention? Why?"



Source: CRC Counselor Survey January/February 2012

Recommendations

CRC and its allies continue to fight for relief for hardworking families on many fronts.

AG settlement agreement

After a year of negotiations, the nation's Attorneys General recently agreed to the terms of a $25 billion settlement with big 5 banks over their foreclosure practices. On February 9th, 2012 California's Attorney General Kamala Harris announced that she would join the settlement, which will include $12 billion in principal reduction for underwater California homeowners, and which imposes new servicing reforms on loan servicers, amongst other things. California Attorney General Kamala Harris was able to secure some positive commitments for California because she was willing to hold banks accountable and sue them for wrongdoing if necessary. However, ensuring that borrowers truly benefit from this settlement will require enforcing the terms of the deal, and penalizing banks when they do not meet the targets set forth in the agreement.

- The federal monitor to the AG agreement should require that banks report monthly on the race, ethnicity, gender and census tract of borrowers receiving assistance under the agreement to ensure that fair housing laws and principles are respected.
- The California monitor should work with advocates and counselors to ensure banks are complying with the California commitment, share reports on bank performance with the public, and step in immediately upon any showing of noncompliance by the banks
- Discretionary funds going to the Attorney General's office under the Agreement should be targeted to housing counselors, legal service offices, tenant outreach and eviction defense organizations, and nonprofit housing developers to maximize participation in the agreement, prevent unnecessary displacement of homeowners and tenants, and allow REO properties to be reclaimed as community resources that provide affordable housing to low income households

State legislation

The AG agreement only covers five institutions and runs for three years. Servicing reforms mandated under the agreement should be expanded to ensure that the industry is more responsive to the needs of homeowners and communities. And most importantly, consumers need to be able to hold financial institutions accountable for their continued failure to abide by promises, programs, policies, rules and laws. The Attorney General has sponsored six bills that comprise the California Homeowner Protection Bill of Rights.

- The California Legislature must finally pass, and Governor Brown should sign, strong dual track protections. Borrower must be considered for loan modifications before the foreclosure process is begun. Where the foreclosure process has started, borrowers who submit loan modification applications should have the process halted while their applications are considered. Any such protections are meaningless if they do not come with a private right of action that holds banks responsible for violations and provides redress to victimized consumers so they can remain in, or return to, their homes.

- The California Legislature must enact additional due process protections for homeowners. Victims of robo-signing must be able to halt their foreclosures. And all mortgages and loan notes and their assignments or sale to others must be recorded in the County Recorders office so that borrowers and the public can know who owns their loan and has the right to foreclose.
- Tenants continue to represent over one-third of affected households according to Tenants Together. Tenants deserve additional protections, including a minimum of 90 days notice as provided for in federal law, which is sunseting.
- All foreclosure and loan modification-related notices should be translated into the six most commonly spoken languages in California, in order to maximize consumer understanding, comply with fair housing and language access laws, and to prevent unnecessary foreclosures.

Principal reduction

Acting Director Ed Demacro must change FHFA policy on principal reduction, which is having devastating impacts on California borrowers and communities. He should follow the advice of economists and political leaders (and the practice of banks where they service loans that they own), and allow principal reduction modifications, which will benefit homeowners, neighborhoods, taxpayers, and the larger economy.

Servicing standards

The Consumer Financial Protection Bureau must develop strong, uniform servicing standards so that present day abuses will not be repeated.

When asked about principles that should inform the development of uniform servicing standards, counselors had a lot to say. Top principles articulated include the need for:

- Strong enforcement and accountability of any rules in place
- Principal reduction
- Quicker turnaround timelines for servicers reviewing loan modifications
- Greater transparency throughout the process, including the use of online tools (HOPE Loan Port) and around the Net Present Value formula
- Greater accessibility, better communication and more respectful treatment of borrowers
- Ending the dual track
- More assistance for borrowers who are not yet in default
- Protection for consumers from the danger of loan mod scams
- Dealing with investors who are a potential barrier to loan modifications, either because they are not aware of what servicers are doing, or they are themselves part of the problem and reluctant to follow rules and guidelines
- Recognition that the strong demand for housing counseling necessitates greater funding and other support
- Sustainable loan modifications, and protection of retirement savings of distressed borrowers

- Property maintenance requirements that respect tenant rights and fix properties to an FHA-financeable standard so first time homebuyers, low-income borrowers and borrowers of color have an opportunity to purchase homes.
- Banks should be encouraged to extend long term leases to tenants living in REOs in order to prevent unnecessary displacement, as Fannie Mae currently does.

This report was prepared by Kevin Stein of CRC and Sarah Brett, with helpful edits by Amelia M. Martinez Cantos and Kristina Bedrossian of CRC. Helpful comments on early versions of the survey were given by Lisa Sitkin of Housing and Economic Rights Advocates and Martin Eichner of Project Sentinel, as well as Alan Fisher and Amelia Martinez of CRC. Comments were also provided by Judy Hunter of the Rural Community Assistance Corporation and Maeve Elise Brown of Housing and Economic Rights Advocates. All errors are strictly those of the primary author.

California Reinvestment Coalition advocates for the right of low-income communities and communities of color to have fair and equal access to banking and other financial services. CRC has a membership of nearly 300 nonprofit organizations and public agencies across the state.

<u>Appendix A:</u> Counselor comments regarding servicer(s) with worst performance in terms of foreclosure prevention

Wells Fargo. I find it takes too long for them to respond, and they always lost paperwork/ documents. Also it is very difficult to contact the servicer who is responsible for the case.

BofA, HBC, Wachovia, Indymac. They foreclose while they were doing the Loan Mod.

PHH Mortgage is the worst. They have very bad customer service and you do not feel the willingness to help homeowners.

Indymac. Their ability to receive documents (unless it is online) is atrocious. They seemingly are always missing docs that are already there. Their online portal is limited in data transfer capacity. Some of their loans are insured, giving them no motive to modify.

Wells Fargo does not offer loan mods, only repayment plans

Bank of America - process too long, incorrect info given, repeated request for docs, unsustainable mods and no principal reduction offered in cases where Countrywide clearly targeted qualified Latino homeowners with subprime vs. prime loan product, dual tracking and poorly trained consultants with collection backgrounds

Wells Fargo. Asked for same items for one year, then denied borrower.

HSBC and One West, they will request all the documentation for a loan mod, once the file is deemed complete they will deny because the investor will either not participate in the program or is not doing loan mods. Terrible.

Wells Fargo - send out letters to homeowners stating "we are here to help you avoid foreclosure." But in the end, they string the homeowner along month after month, and in many cases, year after year. They ask the homeowner to submit docs, let the clock run out, wait 45-60 days before they even look at the submitted docs. When the counselors continue to inquire as to when they will make a decision on the docs, the homeowner is required to re-submit docs all over again. How is this preventing foreclosure?

Bank of America. Paperwork lost, loans lost, total chaos, lack of training, disorganized, unreliable. Close second - IndyMac

Saxon. Because their representatives are always rushing and with not much time to verify which programs are available for clients.

BOA, lost docs, after MHA is denied: only offer short sale, refuse to work w/consumers & listen to them. Untrained staff: not aware of all programs offered by BOA, No call backs, not same person to work with, always whomever answers phone, incorrect info given

Chase has been very slow to respond and seem to string people along-keep them paying when they are going to deny them. They aren't good at returning calls.

Bank of America. The reason is the time that they take to review the documents and have an outcome. For instance, if the client is 1 or 2 months late, by the time B of A makes a decision for approval or denial the client is already in foreclosure and owing much more than before. Therefore, the lender may end up denying the request because they are unable (since they owe much more now) to modify the loan within the lender's guidelines.

Chase. Their local Oakland HOC center has gone from neutral to horrible since [one particular employee] left.

Bank of America has too many departments, too many systems, no centralize system of reviews. And have contradicting information. And lost documents, I have experienced personally on many occasions documents where fax sent and the bank representatives have the first page but do not show in their many systems other documents that were included in package, even when cover letter was received and showed how many pages must be attached or included and do not provide courtesy to call or e-mail or attempt to communicate to let borrower know of missed documents. Also do not completely read explanations letters. And never take responsibility for themselves, always blame borrowers for not providing documents on time, but never ever acknowledge mistakes. In many cases borrowers lost opportunity to receive loan modification because of neglect on their part and blame toward ONLY borrowers.

Bank of America, because they cannot be trusted. Their biggest problem seems to be logistics. They are simply too big and it is obvious that the size of this organization under its current management system is unmanageable.

GSE Fannie and Freddie, being they are GSE they should be setting the example as to how quickly and responsive they are to assisting homeowners yet I find they are one of the hardest to work with and will not postpone sale dates even when a modification is in review...bad bad bad shame on them

Litton---impossible to get a hold of a representative. Also First Mortgage---they take years sometimes to review, and are understaffed.

Bank of America because they will approve you for a loan modification and change their minds and equally as bad is Wachovia/Wells Fargo they take so long to say no.

Wells Fargo and Bank of America- they take forever to review documents then claim the past due amount is too large to approve a modification

Bank of America and Chase. Don't see a lot of home owners getting assistance and sometimes the home owners are given different information from the account managers, none of the information is the same

Bank of America hands down. They represent the highest number of foreclosure cases yet do little to cooperate with HUD agencies.

Bank of America. They are so large and too many things fall through the cracks. Cannot reach or get return phone call from Single Point of Contact.

I think a lot of the major ones are about the same in the performance. There is a lot of miscommunication when you call the servicer. There are different notes in the system, one day the homeowner calls and gets told one thing and then a week later the homeowner gets told something else. Or the homeowner gets transferred to different departments so it takes a while to get a hold of someone who knows the status.

Bank of America; because they have had so many changes in their communications, file assignments, telephone number changes, borrowers not being able to make over-the-phone payments unless they are made with assigned contact person, reps not knowing/following HAMP guidelines.

Wells Fargo has the worst performance in terms of foreclosure prevention. Wells Fargo NEVER approves loan modifications for our homeowners! For some reason no homeowner qualifies for HAMP and no homeowner qualifies for their in-house loan modification. Also, we can never get in touch with the SPOC! The SPOC's do not respond to phone calls or e-mails. My experience of Wells Fargo is that they have intentionally fought the loan modification program from day one, much like a teen suffering from teenage defiant oppositional disorder. Its difficult to work with a servicer that boldly defies the OCC's Consent Order and takes an oppositional stance to every homeowner trying to get a loan modification.

Bank of America- between the amount of loans they service and their poor customer service. Also, can recall at least two cases where clients were not even behind in payments yet they were in process of being foreclosed and had to go through hoops to prove they paid.

HSBC, because they don't modify loans

Bank of America. They seem to be very confused about what is needed and take a long time to process. I continually get asked for more information, some of which is already provided in the HOPE loan port.

B of A - no one seems to know what they are talking about. Inconsistent answers to questions. Passed from one department to another.

Fannie and Freddie. Hands down the GSE is the single biggest impediment to preventing foreclosure. My experience is mostly with Fannie. The 12-month rule barring loan modifications, regardless of how long a borrower has been in the process, results in unnecessary foreclosures of qualified borrowers. Dual tracking is probably the single biggest reason houses go to sale for qualified borrowers. The HAMP enforcement team is run by Fannie so there is no accountability and no way to effectively escalate cases.

Indymac has the worst performance in terms of foreclosure prevention. Very difficult to obtain any assistance. We had a client that was a victim of dual tracking and had their home foreclosed on.

B of A because of the volume of homeowners

One West Bank/IndyMac. They continue to request updated documents forever.

Bank of America- They keep running the customers around and around

Union Bank / No monitors, they do as they please

Bank of America they are just too large to be functional. The process and procedure is different for every file it seems and they can't seem to process a complete package in a timely manner.

Bank of America -- INEPT